

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

RUSSELL COHEN,

Plaintiff,

v.

JERRY BAINBRIDGE, et al.,

Defendants.

Case No. 3:06-CV-00587-KJD-VPC

**ORDER**

Currently before the Court is Defendants' Motion to Assess a Strike Pursuant to 28 U.S.C. § 1915(g), (#21), filed January 9, 2008. On June 23, 2008, the Court issued a Minute Order granting Plaintiff an extension of time (#22), until July 21, 2008, to file an opposition to Defendants' Motion. To date, Plaintiff has failed to file an opposition. On August 8, 2008, Magistrate Judge Valerie P. Cooke issued a Report and Recommendation (#23) recommending that Defendants' Motion to Assess a Strike be granted.

Specifically, the Magistrate Judge found that Defendants' Motion has merit, and that Plaintiff had consented to the granting of Defendants' Motion pursuant to LR 7-2, which allows the Court to consider failure to file points and authorities in opposition as consent to the granting of the motion. Moreover, pursuant to 28 U.S.C. § 636(b)(1), and Rule IB 3-2 of the Local Rules of Practice, the parties may file specific objections to a magistrate's report and recommendation within ten days of

1 receipt. To date, Plaintiff has failed to file an opposition to Defendants' Motion, or an objection to  
2 the Magistrate's Report and Recommendation.

3 The Court agrees with, and accepts the Magistrate's Report and Recommendation (#23) that  
4 the Court should assess a strike against Plaintiff for several reasons. Specifically, the Court agrees  
5 that Plaintiff's failure to file points and authorities in opposition to Defendants' Motion to Dismiss as  
6 a concession that his Complaint had no basis in law or fact.<sup>1</sup> The Court also agrees that Plaintiff's  
7 Complaint misrepresented that Plaintiff had never filed other actions in state or federal court  
8 "involving the same or similar facts" as involved in the present action. (Report and Recommendation  
9 at 3.) Additionally, in spite of being granted an extension of time, Plaintiff has failed to file points  
10 and authorities in opposition to the present Motion to Assess a Strike.

11 **I. Conclusion**

12 Therefore, the Court upholds the Magistrate's Report and Recommendation (#23).

13 **IT IS HEREBY ORDERED** that Defendants' Motion to Assess a Strike Pursuant to 28  
14 U.S.C. § 1915(g), (#21) is **GRANTED**.

15 DATED this 9th day of September 2008.

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19 Kent J. Dawson  
20 United States District Judge  
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26 <sup>1</sup>On October 1, 2007, the Court entered an Order (#19) that dismissed this action and entered judgment pursuant to LR 7-2(d) when Plaintiff failed to file points and authorities in objection to Defendants' Motion to Dismiss (#16).